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Supreme Court, U.S.
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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY JOY ANN GUSTILO and
JOSE VICENTE GUSTILO, III,
PETITIONERS

v.

NADINA (MARAVILLA) GUSTILO, Individually
and as Former Administratrix of
The Estate of Armando C. Gustilo, Deceased,
and as Guardian of June Salvacion (Maravilla)
Gustilo; JOSEPH S. HORRIGAN, as Guardian Ad Litem
and Attorney Ad Litem of June Salvacion Gustilo;
and the KANALY TRUST COMPANY, as Administrator
of the Estate of Armando C. Gustilo, Deceased,
RESPONDENTS

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE FOURTEENTH COURT OF APPEALS (HOUSTON) TEXAS

VOLUME 2 OF 2 (APPENDICES T - MM)

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APPENDIX T

[U.S. Constitution]

Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States; between a State and Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
>
> "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the

United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a rand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

[Text Omitted]

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX U

[Excepts from: *Macadangdang v. Court of Appeals*, 199 Sup. Ct. Reports Ann. 73 (September 12, 1980)]

No. L-49542. September 12, 1980.*

ANTONIO MACADANGDANG, petitioner, *vs.* THE HONORABLE COURT OF APPEALS and ELIZABETH MEJIAS, respondents.

. . .

[Text Omitted]

The records show that respondent Elizabeth Mejias is a married woman, her husband being Crispin Anahwo (pp. 61-62, t.s.n., Sept. 21, 1972; pp. 10-11, Brief for Respondent [p. 198, rec.]). She allegedly had intercourse with petitioner Antonio Macadangdang sometime in March, 1967 (p. 38, t.s.n., June 7, 1972 in CC No. 109). She also alleges that due to the affair, she and her husband separated in 1967 (p. 63, t.s.n. Sept. 21, 1972). On October 30, 1967 (7 months or 210 days following the illicit encounter), she gave birth to a baby boy who was named Rolando Macadangdang in baptismal rites held on December 24, 1967 (Annex "A", List of Exhibits).

. . .

[Text Omitted]

The following provisions of the Civil Code and the Rules of Court should be borne in mind:

"Art. 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

"Against this presumption, no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

"This physical impossibility may be caused:

"(1) By the impotence of the husband;
"(2) By the fact that the husband and wife were living separately, in such a way that access was not possible;
"(3) By the serious illness of the husband.

"Art. 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

"Article 257. Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth in article 255, the child is *prima facie* presumed to be illegitimate if it appears highly improbable, for ethnic reasons, that the child is that of the husband. For the purpose of this article, the wife's adultery need not be proved in a criminal case.

xx xx xx [sic]

"Sec. 4. Quasi-conclusive presumptions of legitimacy

"(a) Children born after one hundred eight days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed legitimate.

"Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and

twenty days of the three hundred which preceded the birth of the child.

"This physical impossibility may be caused:

"(1) By the impotence of the husband;
"(2) By the fact that the husband and wife were living separately, in such a way that access was not possible;
"(3) By the serious illness of the husband.

"(b) The child shall be presumed legitimate although the mother may have declared against its legitimacy or may have ben sentenced as an adulteress.

"(c) Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth above, the child is presumed legitimate, unless it appears highly improbable, for ethnic reasons, that the child is that of the husband. For the purpose of the rule, the wife's adultery need not be provided in a criminal case.
xx x" (Rule 131, Rules of Court).

Whether or not respondent and her husband were separated would be immaterial to the resolution of the status of the child Rolando. What should really matter is the fact that during the initial one hundred twenty days of the three hundred which preceded the birth of the aforenamed child, no concrete or even substantial proof was presented to establish physical impossibility of access between respondent and her spouse.

. . .
[Text Omitted]

In Our jurisprudence, this Court has been more definite in its pronouncements on the value of baptismal certificates. It thus ruled that while baptismal and marriage certificates may

be considered public documents, they are evidence only to prove the administration of the sacraments on the dates therein specified -- but not the veracity of the states or declarations made therein with respect to his kinsfolk and/or citizenship (Paa vs. Chan, L-25945, 23 SCRA 1331 [1968]), this Court held that a baptismal administered, in conformity with the rites of the Catholic Church by the priest who baptized the child, but it does not prove the veracity of the declarations and statements contained in the certificate that concern the relationship of the person baptized. Such declarations and statements, in order that the truth may be admitted, must indispensably be shown by proof recognized by law.

The child Rolando is presumed to be the legitimate son of respondent and her spouse. This presumption becomes conclusive in the absence of proof that there was physical impossibility of access between the spouses in the first 120 days of the 300 which preceded the birth of the child. this presumption is actually quasi-conclusive and may be rebutted or refuted by only one evidence -- the physical impossibility of access between husband and wife within the first 120 days of the 300 which preceded the birth of the child. This physical impossibility of access may be caused by any of these:

1. Impotence of he husband;

2. Living separately in such a way that access was impossible; and

3. Serious illness of the husband.

. . .

[Text Omitted]

. . . The law expressly refers to physical impossibility. Hence, a circumstance which makes sexual relations improvable, cannot defeat the presumption of legitimacy; but it may be proved as a circumstance to corroborate proof of

physical impossibility of access (Tolentino, citing Bonet 352; 4 Valverde 408).

. . .

[Text Omitted]

The separation between the spouses must be such as to make sexual access impossible. This may take place when they reside in different countries or provinces, and they have never been together during the period of conception (Estate of Benito Marcelo, 60 Phil. 442). Or, the husband may be in prison during the period of conception, unless it appears that sexual union took place through corrupt violation of or allowed by prison regulations (1 Manresa 492-500).

The illness of the husband must be of such a nature as to exclude the possibility of his having sexual intercourse with his wife; such as, when because of a sacroiliac injury, he was placed in a plaster cast, and it was inconceivable to have sexual intercourse without the most severe paid (Tolentino, citing Commissioner vs. Kotel, 256 App. Div. 352, 9 N.Y. Supp. p. 515); or the illness produced temporary or permanent impotence, making copulation impossible (Tolentino, citing Q. Bonet 352).

. . .

[Text Omitted]

So firm was this presumption originally that it cannot be rebutted unless the husband was incapable of procreation or was absent beyond the four seas, that is, absent from the realm, during the whole period of the wife's pregnancy (10 C.J.S. p.20).

The presumption of legitimacy of children born during wedlock obtains, notwithstanding the husband and wife voluntarily separate and live apart, unless the contrary is shown (Ala. Franks vs. State, 161 So. 549, 26 Ala. App. 430)

and this includes children *born after the separation* [10 C.J.S. pp. 23 & 24; italics supplied].

It must be stressed that Article 256 of the Civil Code which provides that the child is presumed legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress has been adopted for two solid reasons. First, in a fit of anger, or to arouse jealousy in the husband, the wife may have made this declaration (Powell vs. State, 95 N.E., 660). Second, the article is established as a guaranty in favor of the children whose condition should not be under the mercy of the passions of their parents. The husband whose honor if offended, that is, being aware of his wife's adultery, may obtain from the guilty spouse by means of coercion, a confession against the legitimacy of the child which may really be only a confession of her guilt. Or the wife, out of vengeance and spite, may declare the child as not her husband's although the statement be false. But there is another reason which is more powerful, demanding the exclusion of proof of confession or adultery, and it is, that at the moment of conception, it cannot be determined a woman cohabits during the same period with two men, by whom the child was begotten, it being possible that it be the husband himself (Manresa, Vol. I, pp. 503-504).

Hence, in general, good morals and public policy require that a mother should not be permitted to assert the illegitimacy of a child born in wedlock in order to obtain some benefit for herself (N.Y.--Flint vs. Pierce, 136 N.Y. S. 1056, cited in 10 C.J.S. 77).

The law is not willing that the child be declared illegitimate to suit the whims and purposes of either parent, nor merely upon evidence that no actual act of sexual intercourse occurred between husband and wife at or about the time the wife became pregnant. thus, where the husband denies having any intercourse with his wife, the child was still

presumed legitimate (Lynn vs. State, 47 Ohio App. 158, 191 N.E. 100).

With respect to Article 257 aforequoted, it must be emphasized that adultery on the part of the wife, in itself, cannot destroy the presumption of legitimacy of her child, because it is still possible that the child is that of the husband (Tolentino, citing Vera 170; 4 Borja 23-24).

It has, therefore, been held that the admission of the wife's testimony on the point would be unseemly and scandalous, not only because it reveals immoral conduct on her part, but also because of the effect it may have on the child, who is in no fault, but who nevertheless must be the chief sufferer thereby (7 Am. Jur. Sec. 21, pp.641-642).

In the case of a child born or conceived in wedlock evidence of the infidelity or adultery of the wife and mother is not admissible to show illegitimacy, if there is no proof of the husband's impotency or non-access to his wife (Iowa - Craven vs. Selway, 246 N.W. 821, cited in 10 C.J.S. 36).

At this juncture, it must be pointed out that only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral or economic interest involved (Tolentino, citing Bevilaqua, Familia, p.314).

The right to repudiate or contest the legitimacy of a child born in wedlock belongs *only* to the alleged father, who is the husband of the mother and can be exercised only by him or his heirs, within a fixed time, and in certain cases, and *only in a direct suit brought for the purpose* (La --Ducasse vs. Ducasse, 45 So.565, 120 La. 731; Saloy's Succ. 10 So.872, 44 La. Ann., cited in 10 C.J.S. 77; italics supplied).

Thus the mother has no right to disavow a child because maternity is never uncertain; she can only contest the identity of the child (La -- Eloi vs. Mader, 1 Rod. 581, 38 Am.D. 192).

. . .

[Text Omitted]

Respondent had shown total lack of or genuine concern for her child (Rolando) for, even after his birth, she left him in the care of a *yaya* for several months. This is not the normal instinct and behavior of a mother who has the safety and welfare of her child foremost in her mind. The filing of this case itself shows how she is capable of sacrificing the psycho-social future (reputation) of the child in exchange for some monetary consideration. This is blatant shamelessness.

It also appears that her claim against petitioner is a disguised attempt to evade the responsibility and consequence of her reckless behavior at the expense of her husband, her illicit lover and above all -- her own son. For this Court to allow, much less consent to, the bastardization of respondent's son would give rise to serious and far-reaching consequences on society. **This Court will not tolerate scheming married women who would indulge in illicit affairs with married men and then exploit the children born during such immoral relations by using them to collect from such moneyed paramours. This would be the vilest form of wrecking the stability of two families. This would be a severe assault on morality.** [Our emphasis.]

And as between the paternity by the husband and the paternity by the paramour, all the circumstances being equal, the law is inclined to follow the former; hence, the child is thus given the benefit of legitimacy.

Finally, Article 220 of the Civil Code reinforces the aforesaid principle when it provides thus:

"Art. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the *legitimacy of children*, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression."

WHEREFORE, THE DECISION OF THE COURT OF APPEALS DATED JUNE 2, 1978, AND ITS RESOLUTION DATED NOVEMBER 6, 1878 ARE HEREBY REVERSED AND SET ASIDE. COSTS AGAINST PRIVATE RESPONDENT.

SO ORDERED.

APPENDIX V

[Excerpts from UNIVERSAL DECLARATION OF HUMAN RIGHTS; U.N.G.A. Res. 217, U.N. Doc. A/810 (III 1948)]

"Article 7. All are equal before the law and are entitled--to equal protection of the law . . ."

"Article 8. Everyone has the right to an effective remedy in the competent **national tribunals** for acts violating the fundamental rights granted him by the constitution or by law." [Emphasis added.]

"Article 10. Everyone is entitled in equality to a fair and public hearing by an independent and impartial tribunal, in determination of his rights and obligations. . .."

APPENDIX W

[Article 2035, Civil Code of the Philippines]

Art. 2035. No compromise upon the following question shall be valid:

(1) The civil status of persons;

(2) The validity of a marriage or a legal separation;

(3) Any ground for legal separation;

(4) Future support;

(5) The jurisdiction of courts;

(6) Future legitime.

APPENDIX X

[Excerpt from Statement of Facts, pp.560-563]

Ms. Charles: Thank you, Your Honor.

Defendant's 38, the compromise and settlement agreement between Nadina Gustilo and June Salvacion Gustilo and Jose Vicente Gustilo III and the compromise and settlement agreement and addendum thereto between Nadina Gustilo and June Salvacion Gustilo and Milagros Barco as guardian and next friend of Mary Joy Ann Gustilo, we object to the admission of those documents on the basis that the court of appeals' opinion recently issued in the Philippines is the law of the case.

The Court: I will overrule that. I find that the Philippine judgment is not final and that this Court does not have to give it full faith and credit.

Ms. Charles: We also object to the same documents on the basis of estoppel by judgment.

Mr. Horrigan: I would like to interpose an objection to the manner in which Ms. Charles is doing this. She came up here and said she wanted to make a bill of exception. The bill of exception is to be utilized when evidence proffered by a party is excluded by the Court. Then a bill of exception is used to put on that evidence.

What we have here is evidence admitted by this Court, and she raised her objection at the time. The Court admitted the

document and overruled it. She apparently now wants a second go-round, throwing up further objections. This is not the proper time or place or anything else for a bill of exception, so I would object to it on that basis.

The Court: I will overrule your objection. Go ahead, Counsel.

Ms. Charles: Your Honor, we further object to the admission of the compromise and settlement agreement and their addendum on the basis of res judicata.

The Court: Overruled for the same reason, Counsel.

Ms. Charles: We further object to the admission of the compromise and settlement agreement and their addendum on the basis that the contracts are ruled by Philippine law and thus Philippine law is the law of the case. The judgment in the Philippines is currently the law of that case.

The Court: All right. I will overrule that, that the Philippine judgment isn't final and the Court is not required to give it full faith and credit.

Ms. Charles: We further object to the admission of the compromise and settlement agreement and any addendum thereto comprised as part of Defendant's Exhibit 38 because comity should be afforded to the Philippine decision.

The Court: I will deny comity to the Philippine decision.

APPENDIX Y

[Article 1409, Civil Code of the Philippines]

Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time o the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

APPENDIX Z

[Affidavit of Arturo M. Tolentino]

ARTURO M. TOLENTINO, PhB, LLG., LLM., DLL., LL.D (h.c.), citizen and resident of the Republic of the Philippines.

Graduated with highest honor (valedictorian), College of Law, University of the Philippines; obtained Master of Laws and Doctor of Civil Law, both highest honors (meritissimus), from University of Sto. Tomas.

Member, Integrated Bar of the Philippines, Philippine Bar Association, Philippine Lawyers Association, Manila Lawyers, Inc., Philippine Trial Lawyers Association, Philippine Society of International Law. Colegio de Abogados de Madrid (Bar Association of Madrid, Spain), Philippine Constitution Association, Phi Kappa Phi International Honor Society.

Professor of law since 1835 to 1957, in several law institutions, including the University of the Philippines, University of Sto. Tomas, Far Eastern University, University of the East, University of Manila, Philippine Law School, Quezon College, San Sebastian college of law, San Beda college of law. (Specialized in civil law subjects, including Family Relations; stopped teaching due to demands of legislative work after election to the Philippine Senate.)

Elected as congressman, two terms of four (4) years each, as senator, three (3) terms of six years each and one (1) term of three (3) years, and as assemblyman for two terms of six years each. We President of the Senate, and majority leader in the Senate and in the House of Representatives.

Elected and sworn in as Vice President, 1986.

Was Ambassador, minister of state for foreign affairs, and minister of state for foreign affairs, 1973-1985.

Chairman, Philippine delegation to the first, second, and third United Nations Conference on the law of the sea, which produced the international Convention on the Law of the Sea.

Was member of the Code Commission, 1947, which drafted, among others, the present civil code of the Philippines.

Author of several law books, including "Commentaries and Jurisprudence on the Civil Code of the Philippines", in five (5) volumes, published in 1960, with revised editions in 1968, 1974, 1983, 1985, 1987, and reprinted 1990.

Honors and Awards:

President emeritus, Philippine Constitution Association

Most outstanding alumnus, Mapa (East High School, University of Sto. Tomas, University of the Philippines, college Editors Guild.

Outstanding Manilan award in public service, 1994.

Various awards as legal luminary, public servant, legislator, constitutionalist, from several civic, lawyers' and college organizations.

Integrated Bar of the Philippines, most distinguished service award, January, 1994, and lifetimes achievement award, September, 1996, presented by Philippine President Fidel V. Ramos.

Gold medal award for distinguished service to the nation as member of the Code Commission that drafted the Civil

Code of the Philippines, 1948, presented by Philippine President Elpidio Quirino.

Presidential conferment of Grand Mabini Award with the rank of Dakllang Kamanong, June, 1995, by Philippine President Fidel V. Ramos, for "selfless and exemplary contribution in foreign policy and diplomacy,"

after being duly sworn deposes and states under his oath:

Submitted to me for legal opinion is whether the marriage of Nadina Maravilla to Armando Gustilo was valid or void, and if valid, was it subsisting at the time of his death?

The pertinent facts are as follows:

On December 24, 1970, Nadina was married to Francisco Maravilla in Bacolod City, Philippines.

On August 21, 1982, she got married to Armando Gustilo in New Jersey, in the United States.

On March 17, 1983, or seven months after her marriage to Armando Gustilo in New Jersey, Nadina Maravilla filed a pleading under oath in Special Proceeding No. M-130, entitled Maravilla vs. Local Civil Registrar of Makati, Metro Manila, in which she swore that she was then married to Francisco Maravilla.

In her marriage license application for her marriage to Armando Gustilo on August 21, 1982, there was a box which was "checked" by her, indicating that her marriage to Francisco Maravilla had been annulled prior to the date of the application.

On March 12, 1985, she actually obtained in the Philippines the annulment of her marriage to Francisco Maravilla.

In 1986, Armando Gustilo died in Texas.

Nadina Maravilla, Francisco Maravilla, and Armando Gustilo are all citizens and residents of the Philippines.

From these facts, it is very clear that when nadina Maravilla married Armando Gustilo in New Jersey on August 21, 1982, her 1907 marriage to Francisco Maravilla was subsisting, although in her marriage license application she "checked" a box indicating that her marriage to Francisco Maravilla had been previously annulled (an obvious falsity). The truth was what she stated under oath in Spec. Proc. No. M-130, in Makati, Metro Manila, on March 17, 1983 (seven months after her marriage to Armando Gustilo) that she was then married to Francisco Maravilla.

Because she was still married to Francisco Maravilla at the time she contracted marriage with Armando Gustilo, her marriage to Armando Gustilo was bigamous and void.

It is a fundamental principle that the status of a marriage is determined at the time o the celebration of the marriage.

The status of the New Jersey marriage is, generally, determined by the law of the place of celebration (New Jersey). A marriage that is valid in the place of celebration is valid everywhere.

Nadina Maravilla, Francisco Maravilla, and Armando Gustilo, however, are all Filipino citizens.

To a certain extent, the above rule of "a marriage valid where celebrated is valid everywhere" is subject to some exceptions provided in Philippine law.

Article 15 of the Civil Code of the Philippines provides as follows: "Laws relating to family rights and duties, or to the

status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

Article 17, last paragraph provides: "Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgment promulgated, or by determinations or conventions agreed upon in a foreign country."

Under Article 71, of the Civil Code of the Philippines, which was the law in force in 1982, when Nadina Maravilla married Armando Gustilo in New jersey, it was provided:

> "All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law."

A bigamous marriage is one where one or both the parties have a prior subsisting marriage. (See the case of Yap vs. Court of Appeals, etc., G.R. No. 40003, Oct. 28, 1986, 145 SCRA 229).

Under these provisions, we cannot avoid the conclusion that the marriage of Nadina Maravilla to Armando Gustilo in New Jersey in 1982, was void from the beginning because it was a bigamous marriage, a complete nullity.

The later (1985) annulment of her previous marriage to Maravilla could not make that 1982 bigamous marriage valid. As already stated, the status of a marriage must be determined at the time of its celebration. The marriage of Nadina to Gustilo in 1983, being void, not only voidable or annullable, but VOID, it cannot be validated by subsequent events or occurrences. A void marriage legally is NON-EXISTENT,

and cannot be validated. The legal capacity of Nadina, which is determined by Philippine law (Arts. 15 and 71, Civil Code, Supra) must be determined at the moment of the celebration of the marriage to Armando Gustilo (1982), and at that time she was not legally qualified to marry anyone else, because she had a subsisting marriage to Maravilla. The fact that in 1985, her marriage to Maravilla was annulled, did not automatically validate her void bigamous marriage of 1982 to Gustilo, which was legally non-existent.

When Armando Gustilo, therefore, died in 1986, Nadina Maravilla was not a surviving spouse.

Done on March ____, 1997, in _____.

ARTURO M. TOLENTINO

SUBSCRIBED AND SWORN to before me in _____, on March _____, 1997, affiant exhibiting Community Tax Cert. No. 5296253E, issued on 2-28-97, in Quezon City.

NOTARY PUBLIC

APPENDIX AA

[Partial Listing (filed in Court of Appeals August 2, 1996) of Foreign Statutes and Cases Discussed in Appellant's Principal Brief]

BRIEF PAGE(S)	REFER-ENCE	DOCU-MENT	RELATES TO:
PHILIPPINE STATUTES			

11	Actual volumes of the Philippine Civil Code and the Family Code of the Philippines have been produced and argued in Court and controlling excerpts filed in these proceedings, together with notices of intent to rely upon Foreign Law. For example: Tr. 138, 139, 914, 967, 7?-96, 445, 1075-1092	Art. 71, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I. Especially Note 7 dealing with marriages void or voidable under the law where performed.	Appellants' contention that the law of the Philippines requires resort to the law of the jurisdiction performing the marriage to determine its validity.

12		Title I, Art. 255, The Family Code of the Philippines Explained, Vol. 2, 1990 Edition, Lizaso. **ERROR: Should be Article 26, Family Code of the Philippines Ann., Nolledo, 1st Ed., 1988**	Continues provisions of Article 71 of Civil Code of the Philippines.
12		Art. 15, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I	Appellants' claim that marriage was void at time of marriage.

12		Art. 71, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I (Interpreting note, page 57, Vol. I)	Appellants' claim that the New Jersey marriage was void because New Jersey law would so declare.

13	Actual volumes of the Philippine Civil Code and the Family Code of the Philippines have been produced and argued in Court and controlling excerpts filed in these proceedings, together with notices of intent to rely upon Foreign Law. For example: Tr. 138, 139, 914, 967, 72-96, 445, 1075-1092	Art. 71, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I (Note 7, found on page 267, Vol. I)	Appellants' claim of invalidity of New Jersey marriage under Philippine law.

14		Art. 61, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I Art. 63, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I	Public policy of Philippines against bigamous marriage and its prevention.

25 26	Actual volumes of the Philippine Civil Code and the Family Code of the Philippines have been produced and argued in Court and controlling excerpts filed in these proceedings, together with notices of intent to rely upon Foreign Law. For example: Tr. 138, 139, 914, 967, 72-96, 445, 1075-1092	Art. 263, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I Title VI, Art. 170, The Family Code of the Philippines, Vol. 2, 1990 Edition, Lizaso Title VI, Art. 166, The Family Code of the Philippines, Vol. 2, 1990 Edition, Lizaso	Action to impugn legitimacy must be brought within prescriptive period and only by the husband. Appellants' claim that Appellees have no standing to question legitimacy.

27		Editorial note, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I, p. 569	Inadmissibility of wife's testimony to impugn child's legitimacy.
27		Title VI, Art. 167, The Family Code of the Philippines, Vol. 2, 1990 Edition, Lizaso Art. 256, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I	Appellee Nadina (Maravilla) Gustilo is incompetent to testify by affidavit against the legitimacy of her child

32	Actual volumes of the Philippine Civil Code and the Family Code of the Philippines have been produced and argued in Court and controlling excerpts filed in these proceedings, together with notices of intent to rely upon Foreign Law. For example: Tr. 138, 139, 914, 967, 72-96, 445, 1075-1092	Art. 402, Civil Code of the Philippines, Paras, 9th Ed., 1978, Vol. I Title X, Art. 234, The Family Code of the Philippines, Vol. 2, 1990 Edition, Lizaso	Deodoco and Mogasa affidavits were by adult eye witnesses, whose jobs and position made them competent to testify as to their personal observations .
NEW JERSEY STATUTES			

12 13		R.S. 37:1-10 N.J.S.A.13	No common law marriage, no rehabilitation of void marriage by living together as man and wife. False representation of material matter to obtain license renders ensuing marriage void.
PHILIPPINE CASES			

2	Gustilo v. Hon. Fernando P. Agdamag, Presiding Judge, Branch 138, Regional Trial Court, CA - G.R. SP. No. 28626, Ct. of App. Phil., 7th Div., February 16, 1993	Decision of Court of Appeals dated 2/16/93	Fixes dates of Maravilla marriage and annulment and name and date of birth of June Salvacion and declares the agreements to be "void ab initio.
3			
7			Error of Court in refusing to give effect to the decision of 2/16/93.

23	Maravilla v. Local Civil Registrar, SP. No. M-130, Regional Trial Court, Republic of the Philippines, Branch CXXXIII (133), Makati, Metro Manila	Decision of Philippine court January 7, 1985	Error of Court in treating findings of Judge Veloso as issue preclusive in this collateral proceeding.
24			Error of Court in treating findings of Judge Veloso as issue preclusive in this collateral proceeding.

26	Macadangdang v. CA, 100 SCRA 73	Decision of Philippine Supreme Court	An action to impugn legitimacy is statutory and may be exercised only in a suit brought directly for such purpose under statutory constraint.
28	Maravilla v. Local Civil Registrar, SP. No. M-130, Regional Trial Court, Republic of the Philippines, Branch CXXXIII (133), Makati, Metro Manila	Decision of Philippine Court January 7, 1985	Error of Court in treating this collateral decision as virtually the entire basis of its decision in this case.

33 34	Gustilo v. Hon. Fernando P. Agdamag, Presiding Judge, Branch 138, Regional Trial Court, CA - G.R. SP. No. 28626, Ct. of App. Phil., 7th Div., February 16, 1993	Decision of Seventh Court of Appeals of the Philippines dated February 16, 1993	Eliminates any basis under Philippine law by which Appellees may stand on the agreements--i.e., Philippine agreements. They fail under Texas law also.
NEW JERSEY CASES			
12	Richards v. Richards, 353 A.2d 141 (NJ 1976)	Decision of New Jersey Superior Court	Gustilo marriage is void as a bigamous marriage that cannot be rehabilitated .
12	Dacunzo v. Edgye, 117 A.2d 508 (NJ Sp. Ct. 1955)	Decision of New Jersey Supreme Court	
13			

APPENDIX BB

[Intentionally omitted]

APPENDIX CC

[Excerpts from Appellants' Brief Containing Sixth Point of Error and Sub-Points]

SIXTH POINT OF ERROR

SIXTH POINT: The Probate Court erred in rulings on motions and evidence, both exclusion and admission, and erred in the conduct of the trial in such a way that the cumulative effects of it resulted in an unfair trial, prejudicial to Appellants and an incorrect and unjust verdict and constituted reversible error.

The prejudicial actions and events included the following, viz:

a. Denying any meaningful sanctions or discovery relief from Appellee, Nadina (Maravilla) Gustilo.

   Ref.: Motion for Sanctions, Tr. 1127; Motion to Strike Affirmative Defenses, Tr. 2172

b. Extreme laxity in evidence requirements which should have been imposed on the testimony and exhibits of Jay Rea. Ref.:

   Ref.: S.F. 1199-1200; S.F. 1166-1172; S.F. 1175-1176

c. Permitting extensive proof of public holding out by Nadina Maravilla and the deceased to imply marriage and cohabitation when under the circumstances of this case such holding out and cohabitation were irrelevant to any issue.

   Ref.: S.F. 768-781

d. Requiring Appellee, Nadina Maravilla to be addressed by the surname Gustilo, when she had no established right to the use of such name.

Ref.: Pretrial Motions S.F. 11 - 12.

e. Rejecting out of hand substantially all purposed jury instructions and questions upon the issues of fraud and fiduciary responsibility and accepting erroneous and onerous instructions that failed to recognize the special fiduciary relationship of the Administratrix to the heirs of the estate
and required positive findings of trickery and overt fraud.

Ref.: Exceptions to Charge Tr. 2224-2253; S.F. 1557-1643.

f. Denied correct instructions of constructive fraud.

Ref.: Exceptions to Charge, Tr. 2224-2233; S.F. 1557-1643.

g. Denied correct instructions requiring proof by the former administratrix of full disclosure.

Ref.: Exceptions to Charge, Tr. 2238-2240; S.F. 1557-1643.

h. Refusing to require a consistent position by Appellees on such matters or the domicile of the decedent, the bare facts of the Maravilla marriage, whether the claims of status and heirship by Appellees were under Texas, New Jersey or Philippine law and whether they related to a ceremonial or common law marriage and what jurisdiction the marriage was alleged to have occurred in. Whether or not June Gustilo was contending to be a natural child, spurious child, a legitimate child, or an illegitimate child and under

what laws of which jurisdiction where the claims being made.

i. Refused to enforce discovery to determine the source of approximately 1.4 million of funds said to have been paid to Appellants treated by Jay Rea as having been estate funds and by Nadina Gustilo as having been her private funds.

Ref.: Motion for Sanctions, Tr. 1127; Ad Litem Exhibit 51.

j. The refusal of the Court to grant meaningful sanctions or to strike the pleadings or affirmative claims and defenses of Nadina Gustilo for never answering questions regarding such funds. See a and i supra.

APPENDIX DD

[Excerpts from 61 Stat 1174: Treaties and Other International Acts Series 1568. *Treaty of General Relations Between the United States of America and the Republic of the Philippines.*]

. . .

[Text Omitted]

The property rights of citizens . . . of the Republic of the Philippines in the United States of America shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens . . . of the United States of America.

APPENDIX EE

[Listing of Numerous Motions Urging Probate Court to Acknowledge and Apply Philippine Law]

PLACES WHERE PROBATE COURT WAS ADVISED OF FOREIGN LAW

1. *Second Motion for Partial Summary Judgment Denying Heirship Claim of Nadina (Maravilla) Gustilo or Alternatively for an Order Under Rule 166a(e) T.R.C.P. Setting Forth All Facts Found and Conclusions of Law Upon Which Such Motion is Denied. This Motion is Field by Jose Vicente Gustilo, III and Milagros Barco as the Guardian and Next Friend of Mary Joy Gustilo.* (Tr. 954. Filed 03/08/93 in Probate Court.) **Notice of Gustilo v. Agdamag at p. 2 (Tr. 955). Non-specific reference made to Philippine Civil Code in fn.2 on p.11 (Tr. 964). Section called "Notice of Foreign Law" at p.14 (Tr. 967) refers to a Notice of Foreign Law and authorities attached to motion as Exhibit I (Tr. 1049) (Notice mentions Baluyut, Gustilo v. Agdamag, and De Castro).**

2. *Motion to Set Aside Partial Summary Judgment Approving Heirship Claim of June Salvacion Gustilo and Cross-Motion for Partial Summary Judgment for Denial of the Heirship Claim of June Salvacion Gustilo.* (Tr. 1499. Filed 03/25/93.) **Section 5 of Act No. 3752 and Article 280 of the Civil Code of the Republic of the Philippines at p.3 (Tr. 1501). Reference to Baluyat at pp.4 and 8 (Tr. 1502 and 1506). Gustilo v. Agdamag at pp.5-6, 9 (Tr. 1503-1504, 1507). Article 2035 at pp.5-6 (Tr. 1503-1504). Article 412 Philippine Civil Code p.7 (Tr. 1505). De Castro p.7 (Tr. 1505). Swore in attached affidavit that opposing counsel supplied true and correct copies of foreign authority p.4 (Tr. 1511).**

3. *Brief in Support of Motion to Strike, Exceptions and Opposition to Tendered Affidavits Offered by June Salvacion, Who Calls Herself Gustilo, Through Her Attorney, Ad Litem, Joseph Horrigan.* (Tr. 1976. Filed 04/02/92.) **Non-specific reference to "Philippine law" laying out factual issues under Philippine law regarding impossibility of access. p.1-2 (Tr. 1976-1977). Macadangdang pp.3, 6, 10 (Tr. 1978, 1981, 1985). Family Code of the Philippines Article 167 pp.3, 7 (Tr. 1978, 1982). Article 255 Philippine Civil Code p.4 (Tr. 1979). Article 166 Family Code p.4 (Tr. 1979). Sempio-Diy p.4 (Tr. 1979). Article 164 and 166 of Family Code p.4 (Tr. 1980). Article 170 Family Code pp.6, 8 (Tr. 1981, 1983). Article 263, Civil Code pp.6, 8 (Tr. 1981, 1983). Article 256 Family Code p.7 (1982).**

4. *Motion to Strike and Their Exceptions to Certain Tendered Affidavits Offered by June Salvacion Who Calls Herself Gustilo, Through Her Attorney Ad Litem, Joseph Horrigan.* (Tr. 2002. Filed 04/02/93.) **Article 170, Family Code pp.2-4 (Tr. 2003-2005). Article 263, Civil Code pp.2-3 (Tr. 2003, 2004). Macadangdang p.4 (Tr. 2005). Article 256, Civil Code pp.5 (Tr. 2006, 2010). Article 167, Family Code pp.5, 9 (Tr. 2006, 2010). Article 166 Family Code p.6 (Tr. 2007).**

5. *Exceptions and Motion in Opposition to Tendered Affidavits and Exhibits Accompanying the Response of Nadina G. Gustilo to the Second Motion for Partial Summary Judgment Filed by Jose Vicente Gustilo, III and Milagros Barco and Guardian and Next Friend of Mary Joy Gustilo.* (Tr. 2032. Filed 04/05/93.) **Article 2035, Civil Code p.9 (Tr. 2040). Gustilo v. Agdamag pp. 9, 14 (Tr. 2040, 2045). Articles 170 and 171, Philippine Code, pp.10, 12 (Tr. 2041, 2043). Bartolome, De Castro p. 12 (Tr. 2043). Articles 3753 and 280, Civil Code p.13 (Tr. 2044). Roces v. Local Registrar,**

Crisolo v. Macadaong, and Barnebe v. Lacodin, p.13 (Tr. 2044).

6. *Motion for the Introduction Into Evidence of Admissions of Nadina Gustilo.* (Tr. 2071. Filed 04/22/93.) **Maravilla v. Local Civil Registrar p. 3 (Tr. 2073) (Petition attached as Tr. 2081-2087).**

7. *First Amended Motion for Judgment for Jose Vicente Gustilo, III, and mary Joy Ann Gustilo By Her Guardian Milagros Barco as a Matter of Law and Disregarding Jury Answers To All Questions Or Alternatively for Judgment Upon the Jury Verdict in Respect to Certain Answers and Disregarding Jury Answers to Certain Jury Questions.* (Tr. 2262. Filed 05/19/93.) **Gustilo v. Agdamag, p.4 (Tr. 2265) and throughout. Non-specific reference to Philippine Family Code and to Philippine Civil Code p.34 (Tr. 2295).**

8. *Opposition to Motion for Entry of Order Granting June S. Gustilo's Second Motion for Partial Summary Judgment.* (Tr. 2315. Filed 06/07/93.) **Non-specific reference to Philippine law re: mother testifying against child's legitimacy, p.3 (Tr. 2317). Court requested to note Philippine law court in ex parte proceeding, p.4 (Tr. 2318).**

9. *Motion in Limine.* (Tr. 2051. Filed 04/05/93.) **Article 2035, Civil Code p.2 (Tr. 2052). Gustilo v. Agdamag pp.2, 6 (Tr. 2052, 2056). Article 170 Philippine Civil Code pp.3,4,7 (Tr. 2053, 2054, 2057). Article 171 Philippine Civil Code pp.3,4 (Tr. 2053, 2054). Section 5 of Act 3753, Civil Registry Law of the Philippines, p.4 (Tr. 2054). Roces v. Local Registrar, Crisolo v. Madagaong, Barnebe v. Lacodin, Reyes v. CA, Bartolome, De Castro p.4 (Tr. 2054). Article 167, Family Code pp.5, 7 (Tr. 2055, 2057). Article 256, Civil Code p.5 (Tr. 2055). Article 164, Family Code**

p.7 (Tr. 2057). Article 263, Civil Code p. 7 (Tr. 2057).

10. *Motion for Special Instruction.* (Tr. 2254. Filed 04/27/93.) **". . . such a result is forbidden by the laws of every jurisdiction having any relationship to the question. See Motion in Limine and Motion To Exclude and Bar Testimony. In this latter Motion amply [sic] authority is cited." p.2 (Tr. 2255).**

ALSO,

Charles' argument against admission of agreements (S.F. 559-565).

Request agreements and related questions be withdrawn from submission to jury (S.F. 492); denied by court (S.F. 494).

Motion for partial instructed verdict - Motion in Limine (S.F. 487-484, esp. 493).

APPENDIX FF

[Index to Appendix of Foreign Authority
filed in Court of Appeals August 2, 196]

BRIEF PAGE(S)	REFER-ENCE	DOCU-MENT	RELATES TO:
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12		Art. 15, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I	Appellants' claim that marriage was void at time of marriage.

12		Art. 71, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I (Interpreting note, page 57, Vol. I)	Appellants' claim that the New Jersey marriage was void because New Jersey law would so declare.

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27		Editorial note, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I, p. 569	Inadmissibility of wife's testimony to impugn child's legitimacy.
27		Title VI, Art. 167, The Family Code of the Philippines, Vol. 2, 1990 Edition, Lizaso Art. 256, Civil Code of the Philippines Ann., Paras, 9th Ed., 1978, Vol. I	Appellee Nadina (Maravilla) Gustilo is incompetent to testify by affidavit against the legitimacy of her child

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NEW JERSEY STATUTES			

12 13		R.S. 37:1-10 N.J.S.A.13	No common law marriage, no rehabilitation of void marriage by living together as man and wife. False representation of material matter to obtain license renders ensuing marriage void.
PHILIPPINE CASES			

2	Gustilo v. Hon. Fernando P. Agdamag, Presiding Judge, Branch 138, Regional Trial Court, CA - G.R. SP. No. 28626, Ct. of App. Phil., 7th Div., February 16, 1993	Decision of Court of Appeals dated 2/16/93	Fixes dates of Maravilla marriage and annulment and name and date of birth of June Salvacion and declares the agreements to be "void ab initio.
3			
7			Error of Court in refusing to give effect to the decision of 2/16/93.

23	Maravilla v. Local Civil Registrar, SP. No. M-130, Regional Trial Court, Republic of the Philippines, Branch CXXXIII (133), Makati, Metro Manila	Decision of Philippine court January 7, 1985	Error of Court in treating findings of Judge Veloso as issue preclusive in this collateral proceeding.
24			Error of Court in treating findings of Judge Veloso as issue preclusive in this collateral proceeding.

26	Macadangdang v. CA, 100 SCRA 73	Decision of Philippine Supreme Court	An action to impugn legitimacy is statutory and may be exercised only in a suit brought directly for such purpose under statutory constraint.
28	Maravilla v. Local Civil Registrar, SP. No. M-130, Regional Trial Court, Republic of the Philippines, Branch CXXXIII (133), Makati, Metro Manila	Decision of Philippine Court January 7, 1985	Error of Court in treating this collateral decision as virtually the entire basis of its decision in this case.

33 34	Gustilo v. Hon. Fernando P. Agdamag, Presiding Judge, Branch 138, Regional Trial Court, CA - G.R. SP. No. 28626, Ct. of App. Phil., 7th Div., February 16, 1993	Decision of Seventh Court of Appeals of the Philippines dated February 16, 1993	Eliminates any basis under Philippine law by which Appellees may stand on the agreements--i.e., Philippine agreements. They fail under Texas law also.
	NEW JERSEY CASES		
12	Richards v. Richards, 353 A.2d 141 (NJ 1976)	Decision of New Jersey Superior Court	Gustilo marriage is void as a bigamous marriage that cannot be rehabilitated.
12	Dacunzo v. Edgye, 117 A.2d 508 (NJ Sp. Ct. 1955)	Decision of New Jersey Supreme Court	
13			

APPENDIX GG

[Exception to Defendant's Offer of ALJG38 and ALGJ39]

[Note: Duplicate of Appendix X]

Ms. Charles: Thank you, Your Honor.

Defendant's 38, the compromise and settlement agreement between Nadina Gustilo and June Salvacion Gustilo and Jose Vicente Gustilo III and the compromise and settlement agreement and addendum thereto between Nadina Gustilo and June Salvacion Gustilo and Milagros Barco as guardian and next friend of Mary Joy Ann Gustilo, we object to the admission of those documents on the basis that the court of appeals' opinion recently issued in the Philippines is the law of the case.

The Court: I will overrule that. I find that the Philippine judgment is not final and that this Court does not have to give it full faith and credit.

Ms. Charles: We also object to the same documents on the basis of estoppel by judgment.

Mr. Horrigan: I would like to interpose an objection to the manner in which Ms. Charles is doing this. She came up here and said she wanted to make a bill of exception. The bill of exception is to be utilized when evidence proffered by a party is excluded by the Court. Then a bill of exception is used to put on that evidence.

What we have here is evidence admitted by this Court, and she raised her objection at

the time. The Court admitted the document and overruled it. She apparently now wants a second go-round, throwing up further objections. This is not the proper time or place or anything else for a bill of exception, so I would object to it on that basis.

The Court: I will overrule your objection. Go ahead, Counsel.

Ms. Charles: Your Honor, we further object to the admission of the compromise and settlement agreement and their addendum on the basis of res judicata.

The Court: Overruled for the same reason, Counsel.

Ms. Charles: We further object to the admission of the compromise and settlement agreement and their addendum on the basis that the contracts are ruled by Philippine law and thus Philippine law is the law of the case. The judgment in the Philippines is currently the law of that case.

The Court: All right. I will overrule that, that the Philippine judgment isn't final and the Court is not required to give it full faith and credit.

Ms. Charles: We further object to the admission of the compromise and settlement agreement and any addendum thereto comprised as part of Defendant's Exhibit 38 because comity should be afforded to the Philippine decision.

The Court: I will deny comity to the Philippine decision.

APPENDIX HH

(Partial Summary Judgment in Heirship Proceeding entered in Probate Court No. 1)

PARTIAL SUMMARY JUDGMENT IN HEIRSHIP PROCEEDING

BE IT REMEMBERED that on April 30, 1992, the court heard the Motion for Partial Summary Judgment in Heirship Proceeding filed in this cause by June Salvacion Gustilo, a Minor, by and through her duly appointed attorney ad litem. The parties appeared by and through their respective counsel. The Court examined the pleadings, the Motion for Partial Summary Judgment, the responses thereto, and the summary judgment evidence, including the admissions, affidavits and authenticated or certified public records on file at the time of the hearing. Having examined such summary judgment evidence, and having heard the argument of counsel, the Court finds that the following uncontroverted facts exist:

1. That on January 1, 1985, the Honorable Rosario R. Veloso, Judge of the Regional Trial Court of the Republic of the Philippines, in Makati, Metro Manila, signed an Order in Cause No. Sp. Proc. No. M-130, styled "Nadina G. Maravilla, Petitioner v. Local Civil Registrar of Makati, Metro Manila, Respondent."

2. That a properly authenticated copy of said Order was attached to Movant's Motion for Partial Summary Judgment, through the Affidavit of Joseph S. Horrigan, attached to such Motion for Partial Summary Judgment.

3. That Armando C. Gustilo is the father of June Salvacion Gustilo.

4. That June Salvacion Gustilo is the daughter of Armando C. Gustilo, Deceased.

5. That any presumption that the biological father of June Salvacion Gustilo was Francisco J. Maravilla, Jr., was rebutted by the Order o the Philippine Court referred to

above, dated January 7, 1985, which established the paternity of June Salvacion Gustilo by Armando C. Gustilo.

The Court is of the opinion and finds that Section 12.02 of the Texas Family Code is applicable with respect to the issues before the Court in this proceeding.

The Court is of the further opinion, and further finds that there is no genuine issue of material fact on the issue of whether June Salvacion Gustilo is a lawful heir of the Decedent, Armando C. Gustilo, and June Salvacion Gustilo, the moving party is entitled to judgment as a matter of law on such issue.

It is, therefore, ORDERED, ADJUDGED AND DECREED that at the trial of this cause, the findings of the Court, set forth above, are established as facts without the need of further formal proof.

If is further ORDERED, ADJUDGED AND DECREED that June Salvacion Gustilo, a Minor, whose present place of residence is in the State of New Jersey, be and she is hereby declared to be an heir of the Decedent, Armando C. Gustilo and, as a lawful heir, she is entitled to inherit from the Estate of Armando C. Gustilo, Deceased.

It is further ORDERED, ADJUDGED AND DECREED that the issue of the share and interest of June S. Gustilo in the real and personal property of such Decedent is hereby reserved for trial on the merits in this cause.

SIGNED this 1st day of June, 1992.

/s/

JUDGE, PROBATE COURT NO. 1
OF HARRIS COUNTY, TEXAS

APPROVED AS TO FORM AND SUBSTANCE:

. . .

[Approving Signatures Omitted]

APPENDIX II

(Federal Statutes)

42 USC § 1983:

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R. S. § 1979; Dec. 29, 1979, P. L. 96-170, § 1, 93 Stat. 1284.)

28 USC § 1257(a):

(a) Final judgments or decrees rendered by the highest court of a Sate in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the round of its being repugnant to the Constitution, treaties, or laws of the united States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Judiciary Act of 1789:

Sec. 9. *And be it further enacted,* That the district courts shall have exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the Untied States, committed within their respective districts . . .. And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where in alien sues for a tort only in violation of the law of nations or a treaty of the United States. And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offences above the description aforesaid.

Sec. 13. *And be it further enacted,* That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations . . .. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

Sec. 25. *And be it further enacted,* That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any Sate, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, amy at their discretion, if the cause shall have been once remanded before proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.

APPENDIX JJ

[Supreme Court Rules 10(b), (c)]

Rule 10

CONSIDERATIONS GOVERNING
REVIEW ON CERTIORARI

. . .

[Text Omitted]

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

APPENDIX KK

[Texas Family Code, Sections 2.22 and 12.02]

Section 2.22:

§ 2.22. Marriage During Existence of Prior Marriage

A marriage is void if either party was previously married and the prior marriage is not dissolved. However, the marriage becomes valid when the prior marriage is dissolved if since that time the parties have lived together as husband and wife and represented themselves to others as being married.

Acts 1969, 61st Leg., p.2707, ch. 888, § 1, eff. Jan. 1, 1970.

Section 12.02:

§ 12.02. Presumption of Paternity

(a) A man is presumed to be the biological father of a child if:

(1) he and the child's biological mother are or have been married to each other and the child is born during the marriage or not more than 300 days after the date the marriage terminated by death, annulment, divorce, or by having been declared void;

(2) before the child's birth, he and the child's biological mother attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void, and the child is born during the attempted marriage or not more than 300 days after the date the attempted marriage terminated by death, annulment, divorce, or by having been declared void;

(3) after the child's birth, he and child's biological mother have married or attempted to marry each other by a marriage

in apparent compliance with law, although the attempted marriage is or could be declared void or voided by annulment, and:

(A) he has filed a written acknowledgment of his paternity of the child under Chapter 13 of this code;

(B) he consents in writing to be named and is named as the child's father on the child's birth certificate; or

(C) he is obligated to support the child under a written voluntary promise or by court order;

(4) without attempting to marry the mother, he consents in writing to be named as the child's father on the child's birth certificate; or

(5) before the child reaches the age of majority, he receives the child into his home and openly holds out the child as his biological child.

(b) A presumption under this section may be rebutted only by clear an convincing evidence. It two or more presumptions arise that conflict, the presumption that is founded on the weightier consideration s of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Amended by Acts 1987, 70th Leg., ch. 689, § 4, eff. June 18, 1987; Acts 1989, 71st Leg., ch. 375, § 6, eff. Sept. 1, 1989.

APPENDIX LL

[Tex.R.App.P. 90(a)]

"RULE 90. OPINIONS, PUBLICATION AND CITATION

"(a) Decision and Opinion. The court of appeals shall hand down a written opinion which shall be as brief as practicable but which shall address every issue raised and necessary to final disposition of the appeal. Where the issues are clearly settled, the court shall write a brief memorandum opinion."

APPENDIX MM

[New Jersey Statute]

R.S. 37:1-10. N.J.S.A.:

37:1-10. Common law and other marriages without license; validity

Nothing in this chapter shall be deemed or taken to render any common law or other marriage, otherwise lawful, contracted before December first, nineteen hundred and thirty-nine, invalid by reason of the failure to take out a license as herein provided. But no marriage contracted on and after December first, nineteen hundred and thirty-nine, shall be valid unless the contracting parties shall have obtained a marriage license as required by section 37:1-2 of this Title, and unless, also, the marriage, after license duly issued therefor, shall have been performed by or before any person, religious society, institution or organization authorized by section 37:1-13 of this Title to solemnize marriages; and failure in any case to comply with both prerequisites aforesaid, which shall always be construed as mandatory and not merely directory, shall render the purported marriage absolutely void.

As amended L.1939, c. 227, p. 624, § 1, eff. July 18, 1939.